DOCUMENT RESUME

ED 117 285 UD 015 705

TITLE Consent Decree in Aspira et al., Plaintiffs vs Board of Education of the City of New York, et al., Defendants.
INSTITUTION New York City Board of Education, Brooklyn, N.Y.
PUB DATE 30 Aug 74
NOTE 32p.; Parts of this document may not be clearly legible due to the print quality of the original document

EDRS PRICE MF-$0.76 HC-$1.95 Plus Postage
DESCRIPTORS *Bilingual Education; Bilingual Students; *Court Litigation; Culturally Disadvantaged; Educationally Disadvantaged; *Educational Needs; Educational Policy; English (Second Language); Equal Education; Minority Group Children; Non English Speaking; Social Discrimination; Social Integration; Socially Disadvantaged; *Spanish Speaking; Tenl
IDENTIFIERS *Aspira v Board of Education; New York (Manhattan)

ABSTRACT

This document contains a press release and consent decree dealing with establishing city wide basic elements in the education of children whose functional language is Spanish. The major elements of this agreement extend on a city-wide level the best practices that are currently being attempted and implemented for target children in the New York City schools. Certain provisions of the agreement specify the class of children entitled to the full program: that is, those whose language deficiency prevents them from participating in the learning process and who can more effectively participate in Spanish. An improved method of identifying and classifying children who are Spanish speaking or Spanish surnamed is also being developed. The elements of the program that are to be provided in full by September 1975 are: (a) intensive instruction in English; (b) instruction in subject areas in Spanish; and, (c) the reinforcement of the pupils' use of Spanish and reading comprehension in Spanish where a need is indicated. Additionally, and not at the expense of these three elements, these students are to spend maximum time with other children as to avoid isolation and segregation from their peers. The basic program will be operable in a number of schools which will set up pilot programs by February, 1975. (Author/AM)

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN N Y 11201

IRVING ANKER
CHANCELLOR

August 30, 1974

To: Community School Board Members, Community and Assistant Superintendents and Principals

RE: Consent Decree in Aspira, et al. v. Board of Education, et al.

Attached is a copy of a press release and consent decree dealing with establishing city-wide basic elements in the education of children whose functional language is Spanish. The major elements of this agreement extend city-wide the best practices that we have been attempting to implement for these children in the New York City schools. This decree results from an agreement with Aspira and averts protracted litigation which we believe would not have been to the advantage of the children concerned. This matter, of course, has been the subject of discussion at the Consultative Council and with Community Superintendents.

I would like to draw your attention particularly to some provisions of the agreement. Please note that the class of children entitled to the full program (elements of which are identified in paragraph #2 of the consent decree) are those public school "children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish," (see paragraph #3 of the consent decree).

An improved method of identifying and classifying children who are Spanish speaking or Spanish surnamed is being developed by the Office of Educational Evaluation in conjunction with the Office of Bilingual Education (see paragraph #1).

The elements of the program that are to be provided in full by September, 1975 to all children in the "class" -- that is, again, those whose English language deficiency prevents them from participating in the learning process and who can more effectively participate in Spanish -- are as follows: (see paragraph #2)

a) intensive instruction in English,

b) instruction in subject areas in Spanish,

c) the reinforcement of the pupils' use of Spanish and reading comprehension in Spanish where a need is indicated.

Additionally, and not at the expense of these three elements, these students will spend maximum time with other children so as to avoid isolation and segregation from their peers.

To: Community School Board Members, Community and Assistant Superintendents and Principals

RE: Consent Decree in Aspira, et al. v. Board of Education, et al.

By October 30th, a number of schools will be identified which will have pilot programs for full implementation of the above elements by February of 1975. Submission for designation as one of these schools will be made to the Office of Bilingual Education in accordance with procedures described in a special circular that will be issued shortly (see paragraph #8).

As Chancellor and after consultation with others including members of Community School Boards, I will be promulgating minimum educational standards as shall ensure that the agreement is implemented in full for those children who are entitled to it. I have also established a task force consisting of key personnel from headquarters divisions to coordinate the implementation of the agreement to which the Board of Education is committed. Implementation of the agreement will include recruitment, licensing and the expeditious processing of requests for assignment of staff needed to implement the agreement. The Division of Educational Planning and Support is developing training programs for personnel needed in the program. Curriculum materials and the best methods of using them will also be made available to Community School Districts.

I will be meeting with members of Community School Boards, Community Superintendents, and others to answer questions that may be asked about this consent decree.

Sincerely yours,

IRVING ANKER
Chancellor

IA:cms
Attachments
cc: Parent Association Presidents
Parent Federations

FOR RELEASE AFTER 11:00 A.M., THURSDAY, AUGUST 29 N-13-1974/75

BOARD OF EDUCATION OF THE CITY OF NEW YORK
110 Livingston Street, Brooklyn, NY 11201

News Bureau
Office of Public Affairs

Phone: 596-4172

NOTE TO REPORTERS: Earlier today (Thursday, August 29), Judge Marion E. Frankel filed a consent decree in U.S. Federal District Court, Southern District of New York, in which the Central Board of Education and Chancellor Irving Anker agreed with plaintiffs ASPIRA of New York, et al., in litigation designed to obtain and channel necessary resources to Spanish-language dominant pupils. The decree spells out an agreement for an improved method of assessment and classification of Spanish-speaking pupils who have an English language deficiency which prevents them from effectively participating in the learning process and who can more effectively participate in Spanish; and for elements of an educational program for such pupils.

Attached to this release is a copy of the decree.

Chancellor Irving Anker stressed today (Thursday, August 29) that in entering into a consent agreement with ASPIRA of New York the New York City Board of Education and he are launching a major effort to implement further fundamental Board policy that every

more

opportunity should be offered for all children in the City's public schools to be successful in learning.

"The elements of the program as listed in the agreement will now be available to all pupils in all schools in the City who are identified as being unable to learn basic subjects when they are taught in English and who can learn more effectively when they are taught in Spanish," the Chancellor said, pointing out that such a program has been available for several years in some schools and districts in varying degrees and ways.

"Our central offices will provide substantial supportive services to community school districts which have jurisdiction over elementary and junior high schools," he added. He stressed that the community school districts although having to meet minimum standards established by the Chancellor will have the right accorded to them under the decentralization law to exercise considerable judgment and discretion in the development of the elements of the program.

Mr. Anker stated that the agreement was reached after many long meetings with ASPIRA representatives.

"We have an agreement we are happy with and we look forward to continued harmonious relationships with ASPIRA in behalf of our young people," he said.

The Chancellor stated that the Board of Education and he acknowledged at the outset of the ASPIRA litigation the Lau versus Nichols Court case in California which resulted in the court's

affirming the responsibility of public schools to make the advantages and privileges of instructional programs meaningfully available to Chinese students who come to the schools unable to understand English.

The Board of Education's Office of Educational Evaluation in conjunction with the Office of Bilingual Education of the Division of Educational Planning and Support is preparing to administer appropriate tests in October, 1974 in line with the agreement to develop an improved method of assessment and identification of the students.

The elements of the basic program are a) intensive instruction in English, b) instruction in subject areas such as math, science and social studies in Spanish, and c) the reinforcement of the pupils' use of Spanish and their reading comprehension in Spanish.

The basic program to be implemented in full by September, 1975, will be operable in a number of schools which will set up pilot programs by February, 1975.

The Chancellor has established a special task force to implement the program.

The Chancellor said that every effort will be made by the central Board of Education to provide an adequate staff to implement the full program. The Board of Education will intensify recruitment of needed staff and will schedule additional license examinations in existing or, if necessary, new licenses and staff training as rapidly as possible.

Among the supportive services to be provided by central administration are additional curriculum materials and access to a special resource center established by the Office of Bilingual Education. Moreover, other units of the Division of Educational Planning and Support including the Learning Cooperative will provide assistance in the field to individual schools and districts.

Beyond the basic and special needs tax levy appropriations as well as federal Title I and other reimbursable funds, an additional $8-million have been recently allocated to community school districts in the 1974/75 school year in proportion to the number of pupils whose dominant language is other than English. Districts will be using the money to implement the program and for related services.

Centrally operated high schools and special schools will also provide the program.

Minimum standards for the program will be promulgated by the Chancellor in consultation with interested groups and individuals and will be announced by April 1, 1975 to become effective September 1, 1975.

The consent agreement is the result of many meetings involving members of the Central Board of Education, Community School Board members, the Chancellor, the Office of the City's Corporation Counsel, the plaintiffs and their counsels.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ASPIRA OF NEW YORK, INC., et al.,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

MEMORANDUM

72 Civ. 4002

- x

A P P E A R A N C E S :

Herbert Teitelbaum, Esq.
Richard Hiller, Esq.
Puerto Rican Legal Defense & Education Fund, Inc.
615 Second Avenue
New York, N.Y. 10017

Attorneys for Plaintiffs

Hon. Adrian P. Burke
Corporation Counsel of the City of New York
Municipal Building
New York, N.Y. 10007

Attorney for Defendants
James G. Greilsheimer, Esq.
Doron Gopstein, Esq.
Of Counsel

FRANKEL, D.J.

As part of the continuing quest for

full and equal educational opportunity, with all that it implies for full and equal citizenship, some recent lawsuits around the country have asserted grievances of public school children whose main or only language is not English. The present case is one of these. It was brought by and on behalf of youngsters born in Puerto Rico or of parents recently arrived from there.

The complaint, filed in September 1972, alleged that the complaining children speak little or no English; that the schools they must attend offer solely or mostly instruction in English; that the results for these children are inadequate learning, lowered educational achievement and test scores, poorer rates of promotion and graduation, and an array of attendant consequences for college entrance, employment, civic participation, and the quality of life generally. The practices

assailed were said by plaintiffs to violate both federal civil rights legislation and several provisions of the United States Constitution, most notably the equal protection and due process clauses of the Fourteenth Amendment. Detailed prayers for relief sought, inter alia, a declaration of rights and an injunction requiring bilingual teaching and other special programs.

If the governing principles were doubtful when the case began, they became clearer on January 21, 1974, when the Supreme Court, unanimous for the result, announced its decision in Lau v. Nichols, 414 U.S. 563. Without reaching questions under the Fourteenth Amendment, but resting solely upon §601 of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and regulations thereunder of the Department of Health, Education, and Welfare, the Court ruled that public school authorities receiving pertinent forms of federal aid must act to make the advantages and privileges of their instructional programs (including the

mastery of English and English skills) meaningfully available to students who come to the schools unable to understand English. No specific kind of relief was sought or ordered. The successful prayer of the petitioner-plaintiffs was "only that the Board of Education be directed to apply its expertise to the problem and rectify the situation." 414 U.S. at 565. The remand "for the fashioning of appropriate relief" (id. at 569) left much to be done.*

---

*We understand that the District Court for the Northern District of California is still in the process of fashioning appropriate relief pursuant to the mandate of the Supreme Court.

So, here, while the mandate of the Supreme Court proclaimed the fundamentals, it left our case at the beginning of what might have been a long and somewhat tortured path. Among the questions open for contest, was, of course, the large and initial one whether defendants were "liable" - whether existing programs of education in the classically multilingual City of New York should be deemed to deny the rights of our plaintiffs as broadly pronounced in Lau. Beyond that, if there was such liability, there was a foreseeable jungle of complexities which, as things have turned out, does not require detailed portrayal. Merely to sketch what lay in prospect, we looked forward to such questions as:

-What means should or must be used to identify and classify the students entitled to relief?

-What forms of instruction, if any, must be deemed so clearly suited to the task as to foreclose other choices by the educational agency "directed to apply its expertise to the problem and rectify the situation"?

-How and in what measure should brute problems of finance affect the extent of defendants' obligations?

Recent experience teaches that answers to questions at least as complex as these are within the reach of the judicial process as the ingenuities of the bar and the bench have adapted the process to the demands made upon it. Nevertheless, the open-ended subjects we confronted in this case called for some practical and prudential assessments traditionally associated more with the "political" than with the judicial specialties It seemed evident that a decree forged in standard adversary fashion might reflect less than a complete and subtle appreciation of the problems. That, at least, was a basic premise on which the court gently encouraged counsel and their clients to consider efforts toward an agreed disposition.

Whatever the court's premises, the response has been splendid on both sides. In a painstaking course of skilled, imaginative, and high-minded endeavors, counsel and their clients have fashioned a consent decree which is being

signed today. As to "liability" strictly (and perhaps emptily) denominated, the question has been passed quite simply; both sides affirm their devotion to the fundamental objectives of equality declared by Lau among other binding authorities. As to the modes of implementation, these have, naturally, been matters for more involved, not always harmonious, sometimes heated exchanges. In the last critical months, however, with evident good faith and a shared outlook on fundamentals, there has been an impressive display of constructive and creative lawyering. The court has cheerfully accepted relegation to the role of occasional host and, at infrequent intervals, has suggested lines of accommodation.

The result appears to be a meaningful and hope-inspiring decree. There are problems still to be solved. There remain subjects of potential disputes in the future. But the main lines seem

clear enough. And, most importantly, the court ventures to predict that the spirit of collaborative building that helped to bring us here should prove a vital force later on in meeting the further challenges we may face.

Dated: New York, New York
August 29, 1974

Marvin E. Frankel

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASPIRA OF NEW YORK, INC., et al.,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

72 Civ. 4002

MEMORANDUM ORDERING NOTICE OF DECREE

FRANKEL, D.J.

The court is today signing a consent decree in this case. The decree represents the results of long negotiations between the parties following some early motion litigation. There is some doubt whether the notice requirements of Fed. R. Civ. P. 23(e) should be deemed applicable.

Having in mind that first steps are to be taken under the decree forthwith, having regard for the fact that the decree contemplates opportunities for further orders and adaptations in the exercise of the court's equitable powers as further circumstances appear, and being of the view that no interests of members of the class

can be seriously or irreparably prejudiced by the procedure now adopted, the court has ordered that the decree become effective but that notice of its provisions be published promptly, such notice to include the advice to members of the class that any views or objections may be submitted to the court at any time up to October 15, 1974. The notice, which defendants shall cause to be published, shall be in the form attached hereto as an Appendix. It shall appear in (1) The New York Times and The Daily News in English and (2) El Diario and El Tiempo in Spanish on or before September 10, 1974.

It is so ordered.

Dated: New York, New York
August 29, 1974

Marvin E. Frankel
U.S.D.J.

Appendix

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ASPIRA OF NEW YORK, INC, et al.,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

72 Civ. 4002

- x

NOTICE OF ENTRY OF CONSENT DECREE

The plaintiffs, representing a class consisting of all Spanish-speaking or Spanish-surnamed New York City public school children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish, and their parents or guardians, and the Board of Education of the City of New York and the Chancellor of the City School District, hereafter referred to as the defendants, have entered into a consent decree with the approval of the Court.

The Consent Decree provides, among other things:

1. The Board of Education will design and implement an improved method for identifying and

classifying children who are Spanish-speaking or Spanish-surnamed according to their ability to speak, read, write and comprehend English and Spanish. In the event such improved method is not developed for full implementation by October 1, 1974, the defendants shall notify plaintiffs' counsel why full implementation is not possible and describe the method of identification and classification to be used.

2. By September, 1975, the defendants shall provide all Spanish-speaking or Spanish-surnamed children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish with: (a) a planned and systematic program designed to develop the child's ability to speak, understand, read and write the English language; (b) instruction in substantive courses in Spanish (for example, courses in mathematics, science and social studies); and (c) a planned and systematic program designed to reinforce and develop the child's use of Spanish; and a planned and systematic program designed to introduce reading comprehension in Spanish to those children entering the school system whose reading

readiness assessment indicates the need therefor. In addition to the foregoing elements, and not at the expense of those elements, an important element of the above program will be that the students receiving instruction will spend maximum time with other children so as to avoid isolation and segregation from their peers.

3. By the beginning of the second semester of the 1974-1975 school year, the defendants shall provide all elements of the program described in the preceding paragraphs to all children within the defined class at the pilot schools which shall be designated by the Chancellor by October 30, 1974.

4. The defendants are under a duty to use their maximum feasible efforts to obtain and expend the funds required to implement the program pursuant to the timetable set forth in paragraphs 2 and 3. The court retains jurisdiction to hear and determine disputes concerning the adequate performance of this obligation.

The above statement is a summary of the Consent Decree. You may obtain a copy of the Decree and the accompanying memorandum of the Court by writing or telephoning

Jerome Kovalcik, Director,
Office of Public Affairs
Room 1214, Board of Education
110 Livingston Street
Brooklyn, New York 11201
596-4172

or

Aspira of New York, Inc.
296 Fifth Avenue
New York, New York 10001
683-6054

Since first steps under the Consent Decree are already taking place and the Decree contemplates opportunities for further orders and adaptations in the exercise of the Court's equitable powers, the Decree pursuant to order of the Court became effective on August 29, 1974. This notice is to advise all members of the defined class that they may express any views or objections concerning the decree by submitting a written statement on or before October 15, 1974, to Hon. Marvin E. Frankel, United States District Court for the Southern District of New York, Foley Square, New York, New York 10007. Copies of such written statements must also be submitted to counsel for the plaintiffs, Herbert Teitelbaum, Esq., or Richard Hiller, Esq., Puerto Rican Legal Defense & Education Fund, Inc., 815 Second Avenue, New York, New York 10017,

and counsel for defendants, Hon. Adrian P. Burke, Corporation Counsel, 1656 Municipal Building, New York, New York 10007.

By order of the United States District Court for the Southern District of New York dated August 29, 1974.

Marvin E. Frankel
United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

ASPIRA OF NEW YORK, INC., et al.,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

----------X

72 Civ. 4002 (MEF)

CONSENT DECREE

1. WHEREAS, this class action was commenced on September 20, 1972 by Puerto Rican and other Hispanic public school children, their parents, and Aspira of New York, Inc., and Aspira of America, Inc., against the members of the Board of Education of the City of New York, the Chancellor of the City School District, and various officials of certain community school districts; and

2. WHEREAS, the Board of Education and the Chancellor of the City School District are the defendants entering into this decree, and are hereafter referred to as the "defendants", and,

3. WHEREAS, defendants acknowledge that plaintiff children have rights under 42 U.S.C. §2000d and the regulations promulgated thereunder enforced in Lau v. Nichols, 414 U.S. 563 (1974); and defendants acknowledge their duty to implement those rights and to secure for plaintiff children the enjoyment thereof; and,

4. WHEREAS, plaintiffs and defendants have agreed upon a Program and the steps required for the implementation

the need which will secure the federally protected rights of plaintiff children; and,

5. WHEREAS, in view of the shared understanding of principles, the parties and the Court have concluded there is no further need to litigate the issue of liability or the nature of the program to be provided and the parties have mutually agreed to the entry of this consent decree; and,

6. WHEREAS, plaintiffs, by consenting to the entry of this decree, do not waive any rights they have under the Fourteenth Amendment to the Constitution of the United States; and,

7. WHEREAS, plaintiffs maintain that the defendants have committed violations of law, and the defendants deny that they have committed violations of law; and, the defendants by consenting to the entry of this decree do not admit that they have committed any violations of law;

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED, and the parties do hereby consent as follows:

1. An improved method for accurately and systematically identifying and classifying children who are Spanish speaking or Spanish surnamed will be designed and implemented by the Board of Education. In anticipation of the parties' entering into a consent decree, the development of such method has begun with the objective of implementation by October 1, 1974. The improved method of classifying shall be designed, among other things, to identify those children whose English language deficiencies prevent them from effectively participating in the learning process, and who can more effectively participate in Spanish. Such improved method will identify the children according to their ability to speak, read, write and comprehend

English and Spanish. The evaluation of a child's reading ability shall include an assessment of his/her reading skills, including reading readiness skills where appropriate, in both English and Spanish.

Periodically, and in any event at least once a year, each child who is Spanish speaking or Spanish surnamed will be so identified and classified. A child who first enters the New York City public school system at the beginning or during the school year and who is Spanish speaking or Spanish surnamed will be identified and classified as soon as possible, but in any event no later than the first full week after his/her enrollment.

In the event such improved method of identifying and classifying is not developed for full implementation at all grade levels by October 1, 1974, the defendants shall promptly notify plaintiffs' counsel in writing setting forth the reasons why full implementation at all grade levels is not possible, and describing the method of identifying and classifying children who are Spanish speaking or Spanish surnamed to be used in that event, and providing any and all instruments, instructions, or other materials relating to that method. Such instruments, instructions, or other materials shall be made available to plaintiffs' counsel subject to such stipulation as may be agreed upon between counsel for the parties as may be necessary to insure that the confidentiality and integrity of the testing instrument and materials are preserved.

2. The Board of Education acknowledges its responsibility to provide all children attending the public schools, both English-speaking and non-English-speaking children, with programs in which they can effectively participate and learn. All children whose English language deficiency

prevents them from effectively participating in the learning process and who can more effectively participate in Spanish shall receive: (a) a planned and systematic program designed to develop the child's ability to speak, understand, read and write the English language (a subject matter course taught in English, however, shall not constitute such a program; and a child should receive intensive instruction in English at times other than the periods in which he/she is scheduled to receive instruction in substantive courses in Spanish); (b) instruction in substantive courses in Spanish (e.g. courses in mathematics, science, and social studies) which is to say, a child is not to receive instruction in any substantive courses in a language which prevents his/her effective participation in any such course, rather than in a language in which he/she can more effectively participate; (c) a planned and systematic program designed to reinforce and develop the child's use of Spanish; and, a planned and systematic program designed to introduce reading comprehension in Spanish to those children entering the school system whose reading readiness assessment indicates the need therefor. In addition to the foregoing elements, (hereinafter referred to as the "Program") and not at the expense of those elements, an important element of the above Program will be that the students receiving instruction will spend maximum time with other children so as to avoid isolation and segregation from their peers.

3. This action is properly maintainable as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. Members of the class are: all New York City public school children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish, and the parents and

guardians of the [illegible] children.

4. The Board of Education, pursuant to Section 2590-g, and the Chancellor, pursuant to Section 2590-h of the Education Law of New York, shall promulgate by April 1, 1975, to become effective September 1, 1975, such minimum educational standards as shall ensure that the Program shall be furnished to those children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish, and the Chancellor and Board of Education shall be responsible for ensuring that the Program is provided in each of the community school districts. In the event the Chancellor distributes or circulates proposed minimum educational standards for comment to individuals, groups, and/or organizations he may wish to consult and/or advise, he shall do so on or before November 15, 1974, and he shall make available to plaintiffs' counsel copies of such proposed minimum educational standards at least fifteen (15) days prior to their distribution or circulation. As part of such minimum standards to be promulgated, provision shall be made that appropriate and necessary personnel are utilized for the Program and that children entitled to the Program are not denied their right to receive said Program, within a school, because of reduction of personnel appropriate for the Program. On or before February 28, 1975 and prior to the promulgation of the minimum educational standards on April 1, 1975, the Chancellor shall make available to plaintiffs' counsel the minimum educational standards. In the event plaintiffs object to the minimum educational standards on the grounds that the standards fail to comply with the terms of the Consent Decree and the parties are unable to resolve their differences promptly, the minimum educational standards in dispute shall be presented by plaintiffs to the Court.

5. Appropriate materials, tests, measuring devices, and other instructional instruments shall be distributed to school officials, and, where necessary, developed for use in the Program. Such materials, tests, measuring devices, and other instructional instruments shall be made available to plaintiffs' counsel subject to such stipulation as may be agreed upon between counsel for the parties as may be necessary to ensure that the confidentiality and integrity of the testing instrument and materials are preserved.

6. Materials used in the Program shall avoid negative stereotypes of members of any ethnic or racial group, and, shall positively reflect, where appropriate, the culture of the children within the Program. Additionally, any personnel training program shall continue to be sensitive to the cultural diversities of children.

7. It is necessary to have an adequate staff for the purpose of implementing the Program. In that connection, a professional in the Program shall: (a) be fluent in the Spanish language, and able to fully comprehend and express himself in written Spanish; (b) possess the requisite content and knowledge skills in the substantive courses in which he teaches; (c) possess the requisite pedagogical skills; and (d) be capable of reading, writing and speaking English. In order to provide such staff the Board of Education shall in good faith take steps which shall include: (i) the developing and implementing of Programs to retrain personnel, who possess content and pedagogical skills, to become fluent in a second language to enable them to participate in the Program; (ii) the developing and implementing of an intensive and ongoing affirmative action program designed to recruit forthwith bilingual personnel in New York City and elsewhere, within the New York City school

system and without, and to place such bilingual personnel appropriately in the school system; (iii) the creation of additional bilingual licenses needed to implement the Program; (iv) the developing and implementing of programs designed to train forthwith personnel, who do not possess bilingual licenses, in preparing for and taking of licensing examinations for said licenses; (v) the scheduling and grading of all bilingual licensing examinations on an expedited basis, so as to provide an opportunity for persons to obtain bilingual licenses, and the use of the Board of Education's best efforts to schedule such examinations as frequently as is necessary to recruit and maintain sufficient staff; and (vi) the use of the Board of Education's best efforts to retrain or place personnel (a) who possess bilingual licenses but who are presently teaching under other licenses and (b) who are fluent in English and Spanish and who are presently teaching in bilingual programs.

8. The Chancellor shall, no later than October 30, 1974, identify a sufficient number of elementary schools, junior high schools, and high schools as Pilot Schools. By the beginning of the second semester of the 1974-75 school year, these Pilot Schools shall provide all elements of the Program to all children within the defined class attending those schools. Such Pilot Schools shall serve the purpose of, among other things, demonstrating on a systematic basis to school personnel on a borough-wide level the means of developing, implementing, and operating the Program. Moreover, these Pilot Schools shall be used to train appropriate school personnel in other schools. The experience of these Pilot Schools shall be widely disseminated. Defendants shall use their best efforts to generate maximum necessary funds to implement the Program in the Pilot Schools, and at a minimum, shall allocate the funds

provided in Section II of Resolution 69 adopted August 14, 1974 for these purposes.

9. The defendants shall provide for full implementation of the Program for all children within the class by September, 1975, and shall submit to plaintiffs' counsel and to the Court by October 18, 1974 an overall plan detailing the relevant elements in the development and implementation of the Program and setting forth a Timetable.

10. The defendants are under a duty to use their maximum feasible efforts to obtain and expend the funds required to implement the Program pursuant to the Timetable. They shall make good faith efforts and undertake all necessary steps to secure sufficient funds from City, State, Federal and other sources for such implementation. In the event defendants' good faith efforts fail to generate sufficient funds to implement this Program pursuant to the Timetable, defendants shall be required to show good cause to this Court why sufficient funds are unavailable, including what steps, if any, defendants have taken to generate sufficient funds from City, State, Federal and other sources. Special reports relating to the efforts being made to obtain funds from City, State, Federal and other sources, in order to effectuate all elements of the Program pursuant to the Timetable, shall be made to this Court by the Chancellor of the City School District of the City of New York on the fifteenth day of each month. Specific and detailed information of any obstacles encountered with respect to funding shall be included in said reports. Copies of the reports shall be provided to the plaintiffs' counsel. In the event there is a reasonable likelihood that full implementation pursuant to the Timetable will not take place by reason of insufficient funds, lack of personnel (even though all necessary steps have been taken pursuant to the terms of this Decree), or otherwise, defendants' counsel shall

inform plaintiffs' counsel of the pertinent facts relating thereto forthwith. The Chancellor shall establish appropriate reporting mechanisms to insure that Community School Boards shall expeditiously communicate such information to the Chancellor. The issue of funding in the event the defendants' good faith, maximum feasible efforts fail to generate funds to implement the Program pursuant to the Timetable need not be determined at this time. However, should either party believe that the issue of funding should be adjudicated because the Program cannot be fully implemented pursuant to the Timetable by reason of purported insufficiency of funds, that issue may be brought before the Court for a determination to be embodied in a supplemental decree.

11. Representatives of the Chancellor and the Board of Education shall consult with plaintiffs with respect to the development and implementation of all items contained in this Consent Decree.

12. The defendants shall submit to the Court, with copies to plaintiffs' counsel, detailed monthly periodic compliance reports commencing on September 18, 1974, on the progress of the implementation of the Program, and on defendants' adherence to the Timetable. Such reports shall include copies of relevant supporting documentation and other materials relating to the implementation of the Program and adherence to the Timetable.

13. The defendants acknowledge that the plaintiffs by entering into this Consent Decree do not waive any rights plaintiffs may have with respect to costs, disbursements, and reasonable attorneys' fees arising out of this action; and plaintiffs expressly reserve any and all rights they may have to costs, disbursements, and reasonable attorneys' fees, arising

out of this action.

14. The Court retains jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary or proper.

Dated: New York, New York

August 29, 1974.

MARTIN E. FRANKEL
United States District Judge

The parties to this decree, by their attorneys, hereby consent to the entry of this order:

HERBERT TEITELBAUM
RICHARD J. HILLER
Puerto Rican Legal Defense & Education Fund, Inc.
815 Second Avenue Room 900
New York, New York 10017
(212) 687-6644

ATTORNEYS FOR PLAINTIFFS

ADRIAN P. BURKE
Corporation Counsel
City of New York
Municipal Building
New York, New York 10007
(212) 566-5500

By: JAMES G. GREILSHEIMER
DORON GOPSTEIN

ATTORNEYS FOR The Chancellor of the City School District, and the Board of Education of the City of New York.